

No. 10974

United States
Circuit Court of Appeals
For the Ninth Circuit.

E. J. HEBETS,

Appellant,

vs.

BENSON G. SCOTT,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED

MAR 15 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

HILL, ROBERT AND HILL

405 Luhrs Tower,
Phoenix, Arizona.

Attorneys for Appellant.

BLAINE B. SHIMMELL, Esquire,

317 Title and Trust Building,
Phoenix, Arizona.

Attorneys for Appellee. [3]

*Page numbering appearing at foot of page of original certified
Transcript of Record.

In the Superior Court of the State of Arizona

In and for the County of Maricopa

No. 52767—Div. 3

E. J. HEBETS,

Plaintiff,

vs.

BENSON G. SCOTT,

Defendant.

PETITION FOR REMOVAL

To the Superior Court in and for Maricopa County,
Arizona:

Your petitioner, Benson G. Scott, appearing specially and for the sole purpose of filing and presenting this, his petition for removal, respectfully represents and shows the Court:

I.

That the above-entitled suit, of a civil nature, of which District Courts of the United States have original jurisdiction, was brought, and is now pending, in the above-entitled court; that the matters and amount in dispute therein exceed, exclusive of interest and costs, the sum or value of \$3,000.00; and that the time within which defendant above named may appear and answer or defend the same, as provided by the laws of the State of Arizona and the rules of this Court, has not expired.

II.

That petitioner, sole defendant in this suit, was,

when this suit was commenced, ever since has been, and still is, a citizen and resident of the State of California and not a citizen or resident of the State of Arizona; and that plaintiff was, when this suit was commenced, ever since has been, and now is, a citizen and resident of the State of Arizona.

III.

Petitioner represents that, by reason of the foregoing facts, he, as sole defendant in this suit, is entitled, [4] and desires, to have this suit removed from the Superior Court of the State of Arizona, in and for the County of Maricopa, to the District Court of the United States for the District of Arizona, and, accordingly, herewith presents his bond in the penal sum of \$1,000.00, with good and sufficient surety, for his entering, in said District Court of the United States, within the time required by law, a certified copy of the record in this suit, and for payment of all costs that may be awarded by said District Court, if said Court shall hold that this suit was wrongfully and improperly removed thereto.

Wherefore, petitioner prays that this Honorable Court proceed no further herein, except to make the Order of Removal required by law, accept and approve the said bond, and cause the record herein to be removed to the District Court of the United States for the District of Arizona, at Phoenix, Arizona.

BLAINE B. SHIMMEL

Attorney for Defendant Petitioner.

State of California,
County of San Diego—ss.

Benson G. Scott, being first duly sworn, on oath deposes and says:

That he is the sole defendant in the above-entitled cause, and named in the foregoing petition; that he has read said petition, knows the contents thereof, and that the allegations therein contained are true.

BENSON G. SCOTT

Subscribed and sworn to before me this 6th day of March, 1944.

(Notarial Seal) I. YASINSKI

Notary Public in and for the County of San Diego,
State of California.

My Commission Expires: Oct. 2, 1944. [5]

Copy received and service acknowledged this 20
day of March, 1944.

HILL, ROBERT & HILL
Attorney for Plaintiff.

[Endorsed]: No. 52767. Filed Mar. 20, 1944.

[Endorsed]: Filed Apr. 15, 1944.

[Title of Superior Court and Cause.]

ORDER OF REMOVAL

Benson G. Scott, sole defendant in the above-entitled cause, having filed herein his petition for an order removing this cause to the District Court

of the United States for the District of Arizona, together with his bond on such removal, and notice of the filing and hearing of said petition; and it appearing to this Court that said petition is in due form, and filed with the required time, and that said bond is conditioned as provided by law;

And it appearing that the notice required by law, of the filing of said petition and bond, has been duly served upon plaintiff herein; and it further appearing to this Court that this is a proper cause for removal to said District Court of the United States; this Court does now hereby accept and approve said bond; and

It Is Ordered, That the above-entitled cause be, and the same is hereby, removed to the District Court of the United States for the District of Arizona; that all other proceedings of this Court herein be stayed; and that the Clerk of this Court is hereby directed to make up the record in this cause for transmission to said District Court forthwith.

Dated this 21st day of March, 1944.

HAROLD R. SCOVILLE
Judge.

[Endorsed]: Filed Mar. 21, 1944. [7]

[Endorsed]: Filed Apr. 15, 1944, Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gertrude I. Bitting, Deputy Clerk.

In the District Court of the United States
for the District of Arizona

No. Civ. 546—Phx.

E. J. HEBETS,

Plaintiff,

vs.

BENSON G. SCOTT,

Defendant.

AMENDED COMPLAINT

Comes Now plaintiff and for cause of action against defendant alleges that:

I.

At all times herein mentioned plaintiff was and now is a duly licensed real estate broker and engaged in the real estate business in the City of Phoenix, Maricopa County, State of Arizona.

II.

On or about June 1, 1943, plaintiff was employed by defendant to procur a purchaser for real estate owned by the defendant, which said real estate is in Maricopa County, State of Arizona, and described as follows:

The E $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 31, Township 2N. Range 2E., G. & S. R. B. & M.

III.

In consideration thereof defendant promised and agreed to pay plaintiff for his services a commission of five per cent (5%) on the sale price thereof.

IV.

A memorandum of such promise and agreement upon which this action is brought was in writing and signed by the said defendant. [9]

V.

On or about the 20th day of September, 1943, plaintiff negotiated the sale of said land belonging to the defendant upon the terms and conditions fixed and agreed upon by the defendant for the sum of One Hundred Eight Thousand and No/100 (\$108,000.00) Dollars. The purchase procurred by the plaintiff for the defendant's aforesaid land was then and there willing, ready and able to complete the purchase of defendant's real estate upon the terms and conditions fixed and agreed upon by the defendant with the plaintiff.

VI.

That plaintiff has duly performed all the conditions of said contract on his part to be performed.

VII.

Defendant has not paid the plaintiff the said commission or any part thereof, and there is now due and unpaid to plaintiff from the defendant the sum of Five Thousand Four Hundred and No/100 (\$5,400.00) Dollars.

Wherefore, plaintiff prays judgment against defendant for the sum of Five Thousand Four Hundred and No/100 (\$5,400.00) Dollars, and for costs of suit.

HILL, ROBERT & HILL
By ROULAND W. HILL
Attorneys for Plaintiff

SECOND CAUSE OF ACTION

For a further and second cause of action against defendant, plaintiff alleges that:

I.

Paragraph I of the first cause of action is hereby referred to and made a part hereof.

II.

On or about the 20th day of September, 1943, the plaintiff performed services for the defendant at his request [10] as a real estate broker in Maricopa County, Arizona, in the negotiation of a sale of the following real estate located in Maricopa County, Arizona, to-wit:

The E $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 31, Township 2N. Range 2E., G. & S. R. B. & M.

Plaintiff procurred for the benefit of the defendant a purchaser ready, willing and able to purchase defendant's real estate upon the terms and conditions fixed and agreed upon by the defendant with the plaintiff for the sum of One Hundred Eight Thousand and No/100 (\$108,000.00) Dollars.

III.

Such services were reasonably worth the sum of Five Thousand Four Hundred and No/100 (\$5,400.00) Dollars.

IV.

Defendant has not paid said sum or any part thereof.

Wherefore, plaintiff prays judgment against the defendant for the sum of Five Thousand Four Hundred and No/100 (\$5,400.00) Dollars, and for costs of suit.

HILL, ROBERT & HILL

By ROULAND W. HILL

Attorneys for Plaintiff.

Received a copy of the foregoing amended complaint this 29th day of April, 1944.

BLAINE S. SHIMMEL AC

Attorney for Defendant.

[Endorsed]: Filed May 1, 1944. [11]

[Title of District Court and Cause.]

ANSWER

For his answer to the first cause of action contained in plaintiff's amended complaint, defendant admits, denies and alleges, as follows:

I.

Admits the allegations of Paragraph I.

II.

Denies that plaintiff was employed by defendant as alleged in Paragraph II or otherwise.

III.

Denies that this defendant promised and agreed to pay plaintiff a commission, as alleged in Paragraph III or otherwise.

IV.

Denies that a memorandum of any such promise or agreement was or is in writing or signed by this defendant.

V.

Denies that on or about September 20, 1943, plaintiff negotiated the sale of any land belonging to this defendant, as alleged in Paragraph V or otherwise; denies that plaintiff ever procured a purchaser for defendant's land, as alleged in Paragraph V or otherwise, and denies that there was an agreement between plaintiff and defendant in respect of defendant's land. [12]

VI.

Answering Paragraph VI, defendant denies the existence of any contract between plaintiff and defendant.

VII.

Answering Paragraph VII, defendant admits that he has not paid plaintiff the commission alleged in said amended complaint, or any part thereof; denies that he owes plaintiff Five Thousand Four Hundred (\$5,400.00) Dollars, or any amount.

For his answer to the second cause of action, contained in plaintiff's amended complaint, defendant admits, denies and alleges, as follows:

I.

Answering Paragraph I, admits the allegations of Paragraph I of plaintiff's first cause of action.

II.

Denies that plaintiff, on or about September 20, 1943, or at any time, performed services for this defendant at his request, as alleged in Paragraph II or otherwise. Denies that he ever entered into any agreement with plaintiff, as alleged in Paragraph II or otherwise.

III.

Denies that any services performed by plaintiff were reasonably worth Five Thousand Four Hundred (\$5,400.00) Dollars, or any amount.

IV.

Admits that he has not paid plaintiff Five Thousand Four Hundred (\$5,400.00) Dollars, or any part thereof.

V.

Alleges that no memorandum of the alleged promise or agreement, upon which plaintiff's second cause of action [13] is brought, was ever in writing, signed by this defendant.

Wherefore, having fully answered, defendant prays that plaintiff's amended complaint be dismissed, and for his costs herein.

BLAINE B. SHIMMEL

Attorney for Defendant.

Copy received and service acknowledged this 8th day of May, 1944.

HILL, ROBERT & HILL

Attorney for Plaintiff.

[Endorsed]: Filed May 8, 1944. [14]

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Comes now defendant and, pursuant to Rule 56, moves the Court for a summary judgment dismissing plaintiff's amended complaint, upon the grounds:

1. That the claim, asserted in and by plaintiff's amended complaint, is for a commission, or the reasonable value of plaintiff's services as a broker, upon the sale of defendant's real estate; it being alleged (in Paragraph IV) and denied in defendant's answer that a memorandum of the promise, upon which the action is brought, was in writing, signed by defendant, as required by the provisions of Section 58-101 A.C.A. 1939.

2. That the existence of such a memorandum in writing, signed by defendant, is a material fact, necessary to be proved by plaintiff.

3. That pursuant to the respective motions of plaintiff and defendant, under Rule 34, and the orders made and entered herein on May 22, 1944, plaintiff and defendant have each produced for inspection and copy by the other all letters, telegrams, and other writings, written or received by them from the other in the premises, which writings necessarily constitute or contain all the evidence relied upon by plaintiff, of a memorandum in writing, signed by defendant, of the promise or agreement alleged in plaintiff's amended complaint. A full, true [15] and correct copy of said documents, numbered 1 to 43 inclusive, is hereto attached and made a part of this motion.

4. That said writings show that there is no genuine issue as to the material fact of the existence of the memorandum in writing, required to be proved by plaintiff, and that defendant is entitled to a judgment of dismissal of plaintiff's amended complaint, as a matter of law.

Dated this 26 day of June, 1944.

BLAINE B. SHIMMEL

Attorney for Defendant. [16]

DOCUMENT No. 1

January 8, 1942

Mr. Benson G. Scott,
1306 Sixth Street
Coronado, California

Dear Mr. Scott:

Since writing you on October 27th, I have not heard from you regarding the 360 acres of land here in Section 31, Township Two North, Range Two East.

If this land is for sale, we would like very much to have a listing on it.

Yours truly,

FARM & HOME INVESTMENT
CO.

Per W. J. McNAMARA

WJM:mb [17]

DOCUMENT No. 2

February 2, 1942

Mr. Benson G. Scott,
1306 Sixth St.,
Coronada, Calif.

Dear Mr. Scott:

You mentioned in your letter that you expected to be in Phoenix and I have been expecting to see you in the office, but evidently you didn't get a chance to come over.

I have a party who is interested in the place and he asked me to write you and see if you would consider taking two 40's in on trade, or if not, if

you would consider selling 160 acres of it and at what price. This man would like to have the whole thing if he could trade the two 40's in on it. They are both well located and in good shape to rent or sell.

Please let me hear from you as soon as possible.

Very truly yours,

E. J. HEBETS,

Realtor, Farm & Home In-
vestment Co. [18]

DOCUMENT No. 3

Benson G. Scott
1306 Sixth Street
Coronado, California

Feb. 4, 1942

My dear Mr. Hebets:

My apologies for not seeing you. I was in Phoenix for a couple of days in December but was so busy that I failed to get everything done.

Perhaps you have the wrong impression of this property. I am not trying to sell it. I certainly would not be interested in taking two small pieces unless I could get them for less than their market value.

This is a good ranch and a property involving considerable money. If you have a buyer definitely interested and willing to pay the market price for it, let me have an offer that is a business one. I would not consider cutting the piece unless I were offered a substantial premium.

Yours truly,

B. G. SCOTT [19]

DOCUMENT No. 4

February 10, 1942

Mr. Benson G. Scott,
1306 Sixth St.,
Coronado, Calif.

Dear Mr. Scott:

I have your letter of Feb. 4th, and I am very sorry that you didn't find time to drop in and see me when you were in Phoenix. However, I think I understand your position, Mr. Scott. I thought perhaps you might be interested in disposing of it from the stand point that it has been pretty heavily farmed for a number of years and will soon have to be put back to alfalfa.

Of course it is difficult to do very much without a price base to work from. In considering it from the stand point of market value, there are several factors that enter into it, one of which is the fertility or condition of the soil. I would say that the market value on your acreage would be between \$175 and \$200 per acre, and I think if we could get together with my man on a deal that he would turn his two 40's in, acre for acre at the value placed on yours. Although the smaller blocks of land will sell at a higher price per acre. His two 40's are well located and I think one of them would sell for about \$8,500 and one about \$9,000. They are both in good fertility and would rent for about \$27.50 or \$30 per acre.

I would appreciate hearing from you further,

Mr. Scott, and thanking you for your prompt response to my last letter, I am

Very truly yours,

E. J. HEBETS,

Realtor, Farm & Home In-
ment Co. [20]

DOCUMENT No. 5

Benson G. Scott
1306 Sixth Street
Coronado, California

Feb. 16, 1942

Mr. Hebets:

This will acknowledge yours of the 10th.

I shall be over soon; at which time I will look you up. In the meantime if you have a deal that you think will interest me, let me know.

However, as the picture looks at this time I won't consider anything less than two hundred net. So unless you have a buyer that wants to pay a good price don't waste time on this deal.

The best way to get me to sell is to offer me another piece that I can profitably buy. I am willing to trade at any time.

Yours,

SCOTT [21]

DOCUMENT No. 6

March 26, 1942

Mr. Benson G. Scott,
1306 Sixth Street,
Coronado, Calif.

Dear Mr. Scott:

I didn't answer your last letter, as I thought perhaps you might be over soon. However, we have an eastern buyer in here now looking for a piece of land about the size of yours. I have not shown it to him yet, as I would like to have more definite information from you.

I talked to Mr. Smith today, to see if I could find out how much he was paying on his lease. I told him I had written you about the place and that you didn't seem to be very much interested in whether you sold it or not, but I had a man looking for an investment, who might possibly be interested in it, and he advises me that he is dealing with you on it himself and that he has an option to buy it. Will you please advise me what the status is? Does he have an option at a certain price and terms, or does he have an option to match any offer that you might get on it?

The market is a little better here now and there is a possibility that we might be able to get \$225 per acre for it. However, we would have to be assured that in the event we forced a sale to Smith to match our offer that we would be paid our 5% commission.

Mr. Smith advises me that he is paying about

\$25 per acre. Will you clarify this for me and give me the expiration of the lease?

Thanking you for an early reply, I am

Very truly yours,

FARM & HOME INVESTMENT
CO.,

E. J. HEBETS,
Realtor. [22]

DOCUMENT No. 7

Benson G. Scott
1306 Sixth Street
Coronado, California

March 27, '42

Farm & Home Investment Co.

Phoenix, Arizona

Gentlemen:

B. G. Scott left here to day for Phoenix. You can contact him by leaving a note with Western Union in Phoenix.

Truly—

O. E. SCOTT
O. E. Scott [23]

DOCUMENT No. 8

June 15th, 1942

Mr. Benson S. Scott,
1306 Sixth Street,
Coronado, California

Dear Mr. Scott:

I was out by your place the other day and stopped

to see Mr. Smith on your place. He has the place in fine shape now, by the way.

I used up quite a bit of time looking for places when Mitchell was with the Western Farm Management at the same time you were with them. At that time I had an office at 17 South Central in with the Morris Plan, and when it went on the rocks, I moved up with the Mutual Life in the offices the Western formerly were in. For the past two years I was with the post office, but resigned the first of June to go back into the real estate business and am now with the above firm.

We have a good 160 acre tract with a good ranch house and one tenant house. Pressure water in one house and good well with the other place. This land can be bought for \$215. per acre and can be rented for \$25. per acre with water being paid by tenant. This land is west and north from your place and has "A" water right and will show good interest on investment and can be sold on terms if desired.

Kindly let me know if you would be interested.
With best regards, I remain

Sincerely yours
H. I. MORSE

141 West Monroe
Phoenix, Arizona [24]

DOCUMENT No. 9

Copy of
Western Union Telegram

Benson G. Scott,
R. #4, Box 321,
Visalia, Calif.

Have offer \$90,000 cash for your 360 acres. Wire
or phone me collect.

E. J. HEBETS

Farm & Home Investment Co.
141 W. Monroe
Phone 4-4189 [25]

DOCUMENT No. 10

Copy of
Western Union Telegram

Benson G. Scott
1306 Sixth St.,
Coronado, Calif.

Have offer \$90,000 cash for your 360 acres. Wire
or phone me collect.

E. J. HEBETS

Farm & Home Investment Co.
141 W. Monroe [26]

DOCUMENT No. 11

Western Union

DBE 200 18 NL Collect—Visalia Calif

12 1943 Mar 12 PM 10 07

E. J. HEBETS

141 West Monroe

Phoenix, Arizona

Thanks for the offer. Not enough now. Will be over the first of April. See you then.

B. G. SCOTT [27]

DOCUMENT No. 12

March 13, 1943

Mr. Benson G. Scott,
R. #4, Box 321,
Visalia, Calif.

Dear Mr. Scott:

I have your wire this morning in answer to my offer.

I can readily appreciate your position in this, Mr. Scott, in as much as you are not offering the property for sale and you may have more foresight than I have in turning this offer down. However, at this time, \$250 per acre is right up against the ceiling. There isn't anything selling for that kind of a price except improved 40 or 80 acre tracts. I know, of course, that this doesn't matter to you, Mr. Scott, whether we do any work on it or not. However, I think you can see our point of view too. If you consistently put your price above what the market will pay, there isn't much percentage in us trying to sell it.

These buyers are few and far between for acreage that large and it won't be possible for me to hold him until the first of April. I will try to hold him long enough to get a reply back by letter. I would like to have you reconsider and write me by "Air Mail."

As near as I can determine from talking to the man, his offer is as high as he expects to go. In fact, he wanted to make an offer of \$235, but I talked him out of it. However, I would like to have a definite expression from you in the event there is any possibility of him doing any better.

Thanking you for a prompt reply, I am

Very truly yours,

FARM & HOME INVESTMENT
CO.

E. J. HEBETS,
Realtor [28]

DOCUMENT No. 13

Copy of
Western Union Telegram

Phoenix, Arizona
April 7, 1943

Benson G. Scott,
Box 312, R. #4,
Visalia, Calif.

Your wire of March 12th, stated you would be in Phoenix April 1. I have not seen or had any reply to air mail letter of March 13. Think buyer

still available. Would like definite price for at least 10 days.

E. J. HEBETS,
Realtor,
Farm & Home Investment Co.
141 W. Monroe St.,
Phoenix, Arizona [29]

DOCUMENT No. 14

Mr. Benson G. Scott,
R. #4, Box 321,
Visalia, Calif.

Dear Mr. Scott:

I have just secured a listing on a ranch that might possibly be of interest to you, since you are inclined toward the larger ranches.

This ranch, I think is without question the best ranch in the Salt River Valley. It consists of 800 acres in one block and is exceptionally well improved. It was operated as a cattle ranch during the lifetime of the original owner and until his heirs took it over. It is fenced with woven wire and cement posts and has several buildings on it in addition to corrals, silos, etc. It also has an old "A" water right in addition to two large supplemental irrigation wells.

The price of this ranch is \$320,000, which you will note is \$400 per acre and definitely not a sacrifice price, but in proportion to improvements and location, etc., it is considerably cheaper at \$400 per acre than yours ranch at \$300. This property

hasn't openly been put on the market yet. I am just making individual contact.

If you are interested, let me hear from you.

Very truly yours,

FARM & HOME INVESTMENT
CO.

E. J. HEBETS,
Realtor. [30]

DOCUMENT No. 15

Benson Scott
Bisalia
May 31

My dear Hebets:

Your letter about an 800 acre place came this afternoon.

While this is too high a deal for me I am always interested in a high grade property. If the price should get down to sound investment values, I don't believe there is, with a couple of exceptions, a ranch in the Valley that is worth \$400.00 an acre at this time, let me know. "I might be able to work out a combination deal on it, that is, if you sell my other place."

In going over in my mind the places this might be I have come to the conclusion that this is that ranch at Cashion, south side of the Buckeye road. If so it is over priced, but a good ranch. If it is another one, let me know what you are talking about, to be held in confidence of course.

My best regard to you and Morse,

Sincerely,

B. G. SCOTT

Rte. 4, Box 321

Visalia, Calif. [31]

DOCUMENT No. 16

June 3, 1943

Mr. B. G. Scott,
Route #4 Box 321,
Visalia, California.

Dear friend Scott:

Saw your letter to Hebets. You are a very good guesser. I have not been all over the ranch, but they say there are a lot of good improvements on the place, such as barns, sheds, cattle feed lots and from all reports it all well fenced. Hebets and I are planning to drive down just as soon as we can get a breathing spell. His second son left for the Army tonight and this with all the other things, such as moving, he moved Sunday and Monday, has kept him busy.

Since you left, I have sold 32 acres, 65 acres, 40 acres, 20 acres, and a five acre tract. I have two good prospects for your place and thought I had better write you as to lease and if you still wanted only 30% down. Presume you can soon estimate your income bracket and can be governed accordingly. Andrew Hawkins is interested in buying a large tract and Cecil Miller would like to work out a deal of some sort if he can avoid too much income tax from sale of his quarter-section on

Yuma Road. Also have another lettuce grower interested that could pay 30% or better down.

Am sure counting on making this sale in near future, but would appreciate any help you can give as to lease etc. We do not allow any one to go on the place or bother Leo. Let me hear from you at once. Thanks a lot.

Sincerely yours,

H. I. MORSE [32]

DOCUMENT No. 17

June 12th, 1943

Mr. B. G. Scott,
Route 4, Box 321,
Visalia, California

Dear friend Scott:

Leo just called me and said that he had received a letter from you and that the impression he got was that you did not care to sell the place. However, he said that he would bid against any one that made an offer of the place. He stated that he had some of the money in the bank and could get the rest of if he decided to buy it, and he felt that it was only fair to tell me that he was going to try it buy it direct from you and resell what he did not wish to keep and that in this way he could handle it.

It was just this set-up that I was afraid of from the beginning. As long as he had no competition he would not make an offer any where near what we put up to you, but as soon as he finds others

will give \$300 per acre he will do so rather than give up the place. Not that I blame him, but he has had mighty reasonable rent all along, somewhat lower than most tenants even with the amount he has been keeping in alfalfa. I understand that the Dr. Perkins quarter on 20 and Christy is rented to Arena Norton for \$25 per acre for three years and to be kept in alfalfa.

Leo also told me that he didn't believe that land was worth \$300 per acre, but it was just like buying a suit of clothes, "if you wanted it you would buy it even though you knew you were paying too much" at the time. So you can see my position in the matter. When you were over here, I knew that we could sell the place if it could be sold, but we felt that giving Leo the chance to bid against any offer we submitted made [33] it tough on us. Leo expects to make the offer less the commission and then sell part some part of it off. I was in hopes you would not mention who was bidding on the place since it gives him a good opportunity to talk them out of it, since most of the neighbors do not care to bid against a \$5000 handicap. He said that he would write you the first of the week, so I am writing you ahead of his letter in order that you know his intentions, and leave it up to your sense of fairness. As I see it Leo would never have bought the place except to keep some one else from getting it. I am still willing to put up my \$100 that I will sell it between now and July 1st even subject to the one year lease. I know it can be done, but

it would be a lot easier if possession could have been given.

Shall appreciate hearing from you as soon as possible.

Sincerely yours,

..... [34]

DOCUMENT No. 18

Copy of
Western Union Telegram

B. G. Scott
PH 1366M
Visalia, Calif.

Have received no letter as yet. Have two prospects very interested in place and am awaiting letter.

H. I. MORSE
141 W. Monroe
Phoenix, Arizona [35]

DOCUMENT No. 19

Benson Scott
1306 Sixth Street
Coronado, California
Visalia, July 7th.

Dear Morse:

Found your wire waiting for me when I came in last night. I had to go north just after I talked to you last time and in the press of other matters I let the letter to you be put off from day to day,—with the usual result,—a long delay.

I dont know just what you want me to say in this

letter, now that I am writing it. You understand the setup. Leo has a lease until next July. While he has been told by me that he could have the first chance to buy he told me when I was over that the price had gone too high for him. He has never told me anything else. So far as I know that stands.

While I wrote the above I realized that that is not the statement you want. I guess I had better have a written statement from Leo, if I can get one. I will write him today. I am reasonably sure of the answer he will give me but before we try to close a deal I had better have a clear understanding from him. You understand that there is nothing more than a moral obligation on my part, I have assured Leo that I would take care of him should I sell. If a buyer would want to give him a long term lease, three or five years, that would satisfy him I am sure. He would much rather lease than buy.

In the meantime just let the deal simmer. I repeat, what I told you in Phoenix, that you are the only broker who will be allowed to do anything on it. If I decide to put it in anyone else's hands I shall give you ample time to work out anything you may have in mind. At this time you are the only firm [36] who knows I would consider selling at all.

There is this angle. I am not raising the price on the place at this time, but, six months from now the picture may be quite different. Price changes are moving very rapidly just now. But I know you understand that angle.

If you should develop something that is a deal

shoot me a letter on it. I will do my best to work it out for you. I will give you a letter as soon as I have an answer from Leo.

Yours,
SCOTT [37]

DOCUMENT No. 20

July 10th, 1943

Dear friend Scott:

Received your letter this morning and hope that we will able to work out something in near future.

I have two and probably three good prospects for your place—as I wrote you before. Andrew and George Hawkins are very definitely interested in the place. However, after you wrote Leo, he called up Andrew and rather took him to task for trying to buy the place from under him and told Hawkins that he had made you an offer of \$300 per acre (without commission of course) and that he intended to buy the place, but that you refused his offer. Hawkins does not wish to antagonize Leo, but he would consider giving the \$300 per acre with immediate possession and may even consider it subject to the one year lease, but he will have to sell about \$30,000 worth of cattle or trade them to you or else dispose of another ranch he has already had an offer on. For this reason he prefers to know definitely that we can deliver it to him at same price Leo would get it.

I realize your position with Leo, but I do not feel that you are under any obligations to sell to him for any less than to any one else, and you know

that he did not intend to buy the place at present prices if he can continue to lease it from you at such favorable terms. However, I think that he will wiggle around and get financed rather than give up the place. He would not be willing to lease the place at any higher rate than he is paying you if we sold it, but he came right out and told me definitely that he would buy the place himself before he would give it up and that he had the money in the bank to do so.

I appreciate your kindness to us in not putting the place in other brokers hands and I know that you are very fair [38] minded. However, the fact remains if the place is sold for \$300 per acre it will be due to our efforts in a large measure and I think that we have come nearer earning the commission than Leo has.

I am still willing to put up \$100 that I can sell it within 30 days from time you give us a definite commitment. Leo does not have any advantage over our buyers and we will either force him to buy or sell it to one of three buyers we have on the string now. The lease is a big handicap, but it is probable that we can over come this with two of the buyers. At any rate I am willing to take the chance. So will appreciate a letter to the effect that we can deliver it for \$108,000. subject only this one year's lease.

Hope that this will give you the idea of what we are up against and we will hear from you as soon

as convenient, so we will have something definite to work on. With kindest regards, I remain,

Sincerely yours,

..... [39]

DOCUMENT No. 21

August 10, 1943

Mr. Benson G. Scott
Rt. 4, Box 321
Visalia, California

Dear Scott:

Haven't heard from you since July 7th and have been looking for a letter telling how you came out with Leo.

I had Mr. E. H. Kendall out by the place this morning and he is very much interested in the place.

Mr. Kendall is president of the Arrow Transportation Co. of Richmond Highlands in Seattle, Washington. He recently bought the old Bennett place at 126 Country Club Drive. He also has just purchased the 40 acres running from Central Avenue to 7th Street on Missouri Avenue.

He is disposing of his \$40,000 home in Seattle and is going to purchase more land here. Said your place appealed to him more than anything he had seen. He is willing to take it subject to lease or subject to possession at expiration of lease, with some adjustments, if he buys it.

Kendall is now waiting to hear from his wife as to when she will be down. Said he would prefer to hear from her as to whether she had consummated sale of home in Seattle before putting up deposit

but, that he was definitely interested and would like for me to give him a little time for further investigation and said if you cared to investigate his financial standing you were welcome to do so. Most of his business dealings have been with the Standard Oil Company up and down the coast for past 20 years.

I really think we have a good chance of making a deal with him within the next 30 days. He could pay 30% now and balance over period of 5 to 10 years as you preferred. It is his [40] intention to put all the place in alfalfa as soon as he gets possession and would try to make it one of the "show places" in the valley.

Let me hear from you as soon as you can as I want to keep on his trail until he buys. He borrowed my soil map and crop reports and will be in the office again in a few days. I told him not to bother Leo since I could give him all the information as to lease and crops to be planted as soon as I could hear from you.

Sincerely yours,
H. I. MORSE

HIM:je [41]

DOCUMENT No. 22

Copy of
Western Union Telegram
Phoenix, Ariz.
August 20, 1943

B. G. Scott
Rt. 4, Box 321
Phoenix 1366-M
Visalia, Calif.

Have proposition on your 360 that will interest you. Wire where I can reach you by phone.

H. I. MORSE
141 W. Monroe
Phoenix, Ariz. [42]

DOCUMENT No. 23

Western Union
SA 125 9—TDFE VISALIA CALIF 22 1050A
1943 AUG 22 PM 12 27
H I MOTR
PHNX

Just received wire going to Coronado write me there.

B. G. SCOTT [43]

DOCUMENT No. 24

Dear Friend Scott:

Received your wire this morning. Was called to me from Western Union about 5:00 A.M. It had been everywhere. Was addressed to H. I. Motr, Phoenix, Arizona. I am sending this letter to Coronado address on one of your letterheads.

My friend Kendall has offered to trade his 40 acres as a down payment at \$35,000. on your place at \$108,000, subject to lease pro rated to date of sale. I told him it was my understanding that this lease was for a sum of \$7400. with owner paying two acre ft. water assessment and that the lease was from July 1st, 1943 to July 1st, 1944 and that it was requirement that at least one third of the 360 was to be left in alfalfa. Kendall 40 acres is on the south-east corner of Missouri Ave. and Central Ave. and runs over to 7th street. It is all in alfalfa and is rented for \$25 per acre with tenant paying all the water—or at least that is what he informs me. Lease is for year from Aug. 1st, 1943.

I have been told that he paid \$32,000.00 for the place and he told me that he had been offered a profit of over \$2000. since buying it just a short time ago. His attorney informed him that it might be possible for both of you to save a little money on income taxes by trading rather than selling and paying the cash. However, I think that he will do either. He can sell this and pay the third down if you insist.

The lease would not be a hindrance to Kendall as he will not be able to get organized to take over until after the first of the year, but he plans on running it himself, or rather having his own man to do so. He plans to put it all in alfalfa, put in more improvements around the house and make it one of the show places of the valley, he says. He is also in the 90% brackett and said this place would help him out with his income [44] tax.

Let me hear from you as to which deal you prefer and I will get him signed up that way.

I sold four acres of citrus with nice house on north 16th Street last week for \$10,000. and have offers on two other places hanging fire besides this one. \$300. per acre seems to be about tops for general farm land.

Notice that Leo has quite a bit of land plowed. George Hawkins was in to see me last week and asked if I had heard from you. He remarked, "Leo is liable to break your neck if you sell that place out from under him" but I told George that Leo had plenty of time to buy it during past several years if he had wanted to do so, but that I was (unreadable) up to trade agreement subject to your acceptance and wire you, but if you prefer the cash angle with third down and will give him a few days I think he can dispose of this place and pay the down payment and meet your other terms as well. You can rest assured I am camping right on this deal until it is closed one way or other.

Sincerely yours

..... [45]

DOCUMENT No. 25

Sept. 1

Copy of
Western Union Telegram

B. G. Scott
1306 Sixth St.,
Coronado, Calif.

Letter mailed to 1306 Sixth Street, Coronado

brought no answer. Please let me hear from you as to offer.

H. I. MORSE

141 West. [46]

DOCUMENT No. 26

Western Union

D237 7-Coronado, Calif. 3 945A

1943, Sep. 3 AM 11 11

H. I. Morse,

141 West Monroe St., Phxn.

Hope to be over next week. Writing.

SCOTT. [47]

DOCUMENT No. 27

Copy of

Western Union Telegram

Benson G. Scott,

1306 Sixth Street,

Coronado, Calif.

Have had no word from you since your wire of the 3rd. Would appreciate wire or letter or phone call giving us something definite. Good prospects are hard to get and we like to give service when we get an offer. Thanks for your co-operation.

H. I. MORSE,

141 W. Monroe

Phone 4-4189 [48]

DOCUMENT No. 28

September 20
1943

Mr. Benson G. Scott,
R. #4, Box 321,
Visalia, California.

Dear Friend Scott:

Was glad to get your letter today. Immediately called my client, E. H. Kendall, and he came in and signed up a trade agreement to trade his place, (40 acres) on S. E. corner of Missouri Ave. and Central Ave., running clear over to 7th St., as down payment of \$35,000 on your place at \$108,000, subject to your lease to Leo Smith expiring July 1, 1944, to be prorated to date of sale. Mr. Kendall agrees to meet your terms as to balance on your place. Said he could meet most any terms you would like.

Mr. Kendall will be interested in buying even if you do not like the 40 acres. However, this is the choicest piece of subdivision property on the market. All in alfalfa and rented for \$25 per acre until August 1, 1944, with 30 day sales clause.

I think you would do well to come over at once. There is a deal either way if taken care of in time. Let me hear from you by return mail.

Sincerely yours,

H. I. MORSE. [49]

DOCUMENT No. 29

Copy of
Western Union Telegram

Benson G. Scott,
1306 Sixth St.,
Coronado, Calif.

Have definite deal signed up on your place on trade as per letter. If trade not suitable, will arrange deal cash or terms as required by you. Would advise your coming over as soon as possible.

FARM & HOME INVEST-
MENT CO.

By H. I. MORSE
Phone 4-4189. [50]

DOCUMENT No. 30

Agreement For Exchange

This Agreement Witnesseth: That E. H. Kendall, owner of the following described:

First Piece of property situate, lying and being in County of Maricopa, State of Arizona, particularly described as follows, to-wit:

Lots 1-2-19 & 20 Orangewood Subdivision being forty acres more or less

which I agree to exchange for the following

Second Piece of property owned by Benson G. Scott situate in Maricopa County, Arizona, being the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 31, Twn. 2 North Range 2 East.

Terms:

Subject to Federal Land Bank loan of approx. Thirteen Thousand and subject to a balance of approximately sixty thousand & no/100 dollars to be paid according to terms & conditions required by said Benson G. Scott is hereby authorized to act as my agent in negotiating an exchange, he agree that if we shall secure an acceptance of the proposition to exchange the above described property on the above terms, that he will, within sixty days, furnish a Certificate of Title from a reputable and reliable Abstract Company, and to furnish a good and sufficient Deed conveying title to the property first above described. It is also presumed and understood that all principals to this agreement have investigated the respective properties, and the agent or broker is hereby released from all responsibility regarding valuation of same. The agent of any of the parties to this exchange agreement may act for and receive a commission from any of the other parties hereto.

And It Is Further Agreed with said E. H. Kendall that when we have [51] secured an acceptance of the proposition to exchange the above described property on the above terms, he then pay the sum of Seventeen hundred fifty & no/100 Dollars as commission for services rendered. And will allow a reasonable time for the furnishing of a Certificate of Title and good and sufficient Deed conveying the second of the above described properties.

Dated at Phoenix, this 21 day of Sept. 1943.

E. H. KENDALL

This Agreement Witnesseth: That Benson G. Scott of Coronado, Calif., owner of the second piece of property described within, hereby accept the proposition of exchange made therein, and upon the terms therein stated, and agree to furnish a Certificate of Title within Sixty days, showing the title to said property vested in Benson G. Scott and then to furnish a good and sufficient deed conveying title to said property to E. H. Kendall, or assigns. Subject to balance as specified to be evidenced by contract or mortgage, or representatives.

And I further agree to pay Farm & Home Inv. Co. Fifty four hundred & no/100 Dollars, commission for services rendered.

Dated at....., this.... day of....., 19....
..... [52]

DOCUMENT No. 31

Copy of
Western Union Telegram
Phoenix, Arizona
October 8th, 1943

Benson G. Scott,
1306 Sixth Street,
Coronado, Calif.

Wired you offer on Sept. twentieth at Coronado and wrote you at Visalia at same time. When may we expect you over or have you call me?

H. I. MORSE
FARM & HOME INV. CO.
141 West Monroe [53]

DOCUMENT No. 32

Copy of
Western Union Telegram

Benson G. Scott,
1306 Sixth St.,
Coronado, Calif.

May we have answer to our wires? Of Sept. 20th
and Oct. 8th? We need you over here. Ans. Collect.

H. I. MORSE
FARM & HOME INVEST-
MENT CO.

141 W. Monroe
Phone 4-4189 [54]

DOCUMENT No. 33

Benson Scott
1306 Sixth Street
Coronado, California
Saturday, 18th

My dear Morse:

Your wire today gave me a very guilty feeling. I have neglected writing you in the belief that the next day or two would see me in Phoenix; but each day gets away from me without my getting things in shape to get over. Yesterday I learned that I must be in the San Joaquin next week, so another week will get by before I can possibly get over there. At the end of next week I shall tell you when I will be there.

On the matter of the deal: I understand just about what you are thinking, and from your point

of view you have a right to think that I am a hell of a guy to do business with. However I shall not attempt to do anything until I am in Phoenix. Of course this may well cost me more by several times than I am making here, and yet damned If I can get away.

The trade your party has sounds as if I might want it, but again, I can make no decision until I see it.

It is not clear to me that your party will definitely buy. I think you know all there is to know about that place, and the lease. Will your party make a definite offer and put up some earnest money to bind it, for the property, subject to the lease, and for delivery on a certain date. In short, is this a deal or is it a prospect. If it is a prospect I will not feel too badly if we delay for another week or ten days. If you have the deal ready to close I will cut my time in the San Joaquin as short as possible and get there a few days earlier. Write me a line at this address and they will send it on up to me, or better still send it to my Visalia address.

[55]

And Morse get this straight no one ever worked on my affairs, or did me a favor that he didn't get just compensation for it, so take it easy and keep your eyes and ears open for a proposition that will bring us both in an honest dollar or two.

All for now,

yours,

SCOTT. [56]

DOCUMENT No. 34

Phoenix Real Estate Board
Standard Form
Purchase Contract and Deposit Receipt
Farm & Home Investment Co.
141 West Monroe St. Phone 4-4189
Phoenix, Arizona, October 25, 1943

Received From E. H. Kendall residing at 126 E. Country Club Drive, Phone..... the sum of Ten Thousand and No/100 Dollars (\$10,000.00), as earnest money and part purchase price of the following described property situated in Maricopa County, Arizona, to-wit:

SE $\frac{1}{4}$ & S $\frac{1}{2}$ NE $\frac{1}{4}$ & E $\frac{1}{2}$ SW $\frac{1}{4}$ & SE $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 31 Twn. 2N. Range 2E. approx. 360 A. together with improvements thereon

for the full purchase price of One hundred eight thousand and no/100 Dollars (\$108,000.00), the balance of the purchase price to be paid as follows, to-wit:

Ten thousand & No/100 dollars as above an additional twenty-two thousand four hundred upon placing agreement in escrow, an additional 30% or \$32,400 on or before 1 year from Jan. 1, 1944, an additional 30% or \$32,400 on or before Jan. 1, 1945, and an additional payt. of \$10,800 which represents payment in full on or before Jan. 1, 1946. Above deferred payments to bear interest at 5% per annum. Purchaser agrees to take possession subject to lease

expiring as of July 1, 1943. Rents to be pro-rated as of Jan. 1, 1944. It is also understood that said rental is \$7,400 annually.

Interest on deferred payments at the rate of.....
per cent per annum, from.....payable.....

[57]

It Is Hereby Agreed: First: That in the event said purchaser shall fail to pay the balance of said purchase price, or complete said purchase as herein provided, the seller may demand specific performance of this Contract, or may retain the amount paid herein as liquidated and agreed damages, as he may elect.

Second: The purchaser and seller agree that if the title to the above property be defective, ninety days from this time will be given the seller, or his agent, to perfect same. If said title cannot be perfected within said time limit, the earnest money received for herein shall be returned to the purchaser and this Contract cancelled.

Third: That the evidence of title, which is to be furnished and paid for by the seller, is to be in the form of Title Insurance or Certificate of Title, subject to existing rights of way or easements; and building and other restrictive covenants of record. The conveyance of these premises shall be by warranty deed, subject to the conditions of this agreement.

Fourth: That this Contract shall become binding only when executed by the purchaser and by the seller, and shall be in full force and effect from the date of such execution.

Fifth: That the seller shall not consent to any cancellation of this agreement without first obtaining the written consent of the agent to such cancellation.

Sixth: That all items affecting said property shall be prorated in the following manner, to-wit: Principal payments.....Interest..... Taxes Prorate Jan. 1, 1944. Insurance Prorate Jan. 1, 1944. Irrigation Bonds and Assessments due subsequent to..... Water..... Paving Lien installments due subsequent [58] to none Rents Prorate Jan. 1, 1944.

Seventh: Possession to the property to be given Subject to Lease.

Eighth: Time is declared to be the essence of this Contract, but the time for any act required to be done may be extended not longer than thirty days by.....

Ninth: There are no oral agreements not contained herein.

FARM & HOME INVEST-
MENT CO.

Broker.

By E. J. HEBETS

I agree to purchase the above described property on the terms and conditions herein stated, provided the acceptance of this agreement by the seller, or his authorized agent, is made on or before December 15, 1943, at 12 Noon (a.m) (p.m.)

E. H. KENDALL

.....
Purchaser.

I (or we) agree to sell the above described property on the terms and conditions herein stated and agree to pay the above signed agent as commission the sum of Dollars (\$.....), or one-half the deposit in case same is forfeited by the purchaser, provided same shall not exceed the full amount of the commission.

.....
.....

Seller.

.....
Witness

(This form is prepared by the Phoenix Real Estate Board for use of its members only.) [59]

DOCUMENT No. 35

Copy of
Western Union Telegraph

Benson G. Scott,
1306 Sixth St.,
Coronado, Calif

Please do not delay longer than absolutely necessary. Nervous strain has put Morse in the hospital.

E. J. HEBETS,
Realtor,
Farm & Home Investment Co.
Phone 4-4189 [60]

DOCUMENT No. 36

Western Union

D140 9—TDBY Coronado Calif 27 842A 1943

Oct. 27 AM 10 06

I. Morse

141 West Monroe St. PHX

Cannot get report until next week will wire them

SCOTT [61]

DOCUMENT No. 37

November 15, 1943

Mr. Benson G. Scott,
1306 Sixth St.,
Coronado,
Calif.

Dear Friend Scott:

I have been out of office for the past three weeks due to illness, hemorrhage from stomach ulcers.

It seems that not much progress has been made on your deal during my absence, though we have had Kendall's deposit of \$10,000 since October 25th and your wire of October 27th promising report the following week still has not been followed by anything definite.

We have been working on this deal for a long time and when you turned down the Burris offer of \$100,000, you gave us a definite price of \$108,000 with 30% down and balance over a period not to exceed 3 years time. You also stated that there would be no raise in price until we were given ample notice and, further, that no other Broker would be

given a listing without giving us an opportunity to close up on any prospects we had been working on.

We took the above to be a "Gentlemen's agreement" and have produced a buyer ready and willing to buy on above terms and we believe that we have completed our part of the agreement and you have had ample time to comply with your part of the agreement. If there is any time limit you wish to put on closing the deal, that can be arranged, but we don't feel that you are treating us right in ignoring our telegrams and this offer.

In your last paragraph of your letter of Oct. 18th, 1943, you stated, "And Morse, get this straight, no one ever worked on my affairs, or did me a favor that he didn't get just [62] compensation for it", well, that is just what I expect and in this case, we have sold your place as per our agreement and we also feel bound to our client to deliver the place unless there is some flaw in title. Kendall has been very lenient with us and came out to see me while I was in bed to tell me he would wait until I got back to the office before taking further action. He is ready to go right on through with this deal as agreed. It is now up to you.

Sincerely yours,

FARM & HOME INVESTMENT

CO.

H. I. MORSE. [63]

DOCUMENT No. 38

Western Union

Phoenix, Arizona

November 27th, 1943

Benson G. Scott
1306 Sixth Street
Coronado, California

Kendall wants acknowledgement of his acceptance of your proposition on rach. Ready to escrow deal.

H. I. MORSE

Farm & Home Inv. Co.
141 West Monroe
Phoenix, Arizona [64]

DOCUMENT No. 39

Copy of
Western Union Telegram
November 29, 1943

Benson G. Scott
1306 Sixth Street
Coronado, California

Advise coming over immediately to close deal.

H. I. MORSE,
Farm & Home Investment Co.
141 W. Monroe,
Phone 4-4189 [65]

DOCUMENT No. 40

Benson Scott
1306 Sixth Street
Coronado, California
Nov. 29, 1943

Farm & Home Investment Co.

Phoenix

H. I. Morse

Dear Morse:

Your letters and wires have, I suppose, all been received by me. I have delayed answering them, though they should have been acknowledged, because I didnt want to tell you that I couldnt accept your proposition at this time. I have been hoping from day to day that the picture would change. It hasnt at this writing.

I cannot get to Phoenix before the middle of the month.

I am not trying to sell the place through, or to, any one. My inability to close a deal hasnt the remotest connection with any one in Arizona, the price of land, or World War II. When I can give you any other news I will write you.

Yours,

SCOTT [66]

DOCUMENT No. 41

Copy of
Western Union Telegram

December 2, 1943

Benson G. Scott,
1306 Sixth St.,
Coronado, Calif.

Re. your letter Nov. 29th advise us by wire when you can deliver. Escrow agreement has been sent you by Ariz. Title Co. requiring your signature on, or before Dec. 15, 1943, after which time acceptance might be withdrawn and sale lost.

E. J. HEBETS

Realtor
141 W. Monroe
Phone 4-4189 [67]

DOCUMENT No. 42

December 6, 1943

Benson G. Scott,
1306 Sixth St.,
Coronado, Calif.

Dear Mr. Scott:

We have received no answer to our wire regarding your letter of November 29th. Consequently I am writing this letter owing to the urgency of some action being taken before December 15th.

Since you state in your letter that your delay has nothing to do with the price of the land or anyone in Arizona, I presume it would be of no advantage in arriving at your decision if the price picture were

changed. Personally, I feel that if it is possible to make a deal at all, the deal should be made at the price agreed upon. I don't believe in trying to raise the price on a man in the middle of a deal. However, if it were a deciding factor in closing a deal right away, I fully believe Mr. Kendall would agree to pay \$325 per acre rather than lose the deal. That is, if we could have definite assurance from you that you would go ahead with the deal as otherwise outlined in the escrow instructions mailed you by the Arizona Title Co.

Please advise us by return Air Mail what can be done and how long it will take to do it.

Very truly yours,

FARM & HOME INVESTMENT

CO.

E. J. HEBETS,

Realtor. [68]

DOCUMENT No. 43

Western Union

D13 NL-Coronado Calif 9 1943 Dec 10 AM 1 20

E. J. Hebets

141 West Monroe St. Phx

Wire of second and letter of sixth received thanks
for offer price no deciding factor Stop Find it
impossible to make deal Stop Will see you when
I come over

B G SCOTT [69]

Copy Received and Service Acknowledged This
26 Day of June, 1944

By ROULAND W. HILL

Attorney for Hill Robert &
Hill

[Endorsed]: Filed Jun. 28, 1944. [70]

[Title of District Court and Cause.]

STIPULATION

It is stipulated by and between plaintiff and defendant, that the documents numbered 1 to 43 inclusive, full, true and correct copies of which are annexed to defendant's motion for summary judgment herein, constitute and include all of the writings, by or between plaintiff and defendant in the possession of, or known to, plaintiff and defendant, in respect of the promise or agreement alleged in plaintiff's amended complaint herein.

Dated this 27th day of November, 1944.

HILL, ROBERT & HILL

By ROULAND W. HILL

Attorneys for Plaintiff

BLAINE B. SHIMMEL

Attorney for Defendant

[Endorsed]: Filed Nov. 28, 1944. [71]

[Title of District Court and Cause.]

Minute Entry of Monday, May 22, 1944
(Phoenix Division)

April 1944 Term At Phoenix

Honorable Dave W. Ling, United States District
Judge, Presiding.

The motion of defendant for order requiring the production of documents and the motion of plaintiff for production of documents under Rule 34, come on regularly for hearing this day.

Rouland W. Hill, Esquire, is present on behalf of the plaintiff and Blaine B. Shimmel, Esquire, is present for the defendant.

It Is Ordered that the motion of defendant for an order requiring production of documents be and it is granted, and

It Is Further Ordered that the motion of plaintiff for production of documents under Rule 34 be and it is granted.

[Title of District Court and Cause.]

Minute Entry of Monday, October 16, 1944
(Phoenix Division)

October 1944 Term At Phoenix

Honorable Dave W. Ling, United States District
Judge, Presiding.

It Is Ordered that the defendant's motion for summary judgment herein be and it is denied. [72]

[Title of District Court and Cause.]

Minute Entry of Wednesday, October 18, 1944
(Phoenix Division)

October 1944 Term At Phoenix

Honorable Dave W. Ling, United States District
Judge, Presiding.

It Is Ordered that the order heretofore entered
herein denying defendant's motion for a summary
judgment be and it is vacated.

[Title of District Court and Cause.]

Minute Entry of Monday, November 27, 1944
(Phoenix Division)

October 1944 Term At Phoenix

Honorable Dave W. Ling, United States District
Judge, Presiding.

Rouland Hill, Esquire is present for the plain-
tiff and Blaine B. Shimmel, Esquire appears on
behalf of the defendant.

Argument is now duly had on defendant's motion
for summary judgment, and

It Is Ordered that the defendant's motion for
summary judgment be and it is submitted and by
the Court taken under advisement.

[Title of District Court and Cause.]

Minute Entry of Monday, December 11, 1944
(Phoenix Division)

October 1944 Term At Phoenix

Honorable Dave W. Ling, United States District
Judge, Presiding.

The defendant's motion for summary judgment
having been submitted heretofore,

It Is Ordered that the defendant have summary
judgment herein.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This cause having been heard upon defendant's
motion for summary judgment and plaintiff's op-
position thereto, the court makes the following

FINDINGS OF FACT

1. That as stipulated by plaintiff and defendant,
the documents numbered 1 to 43 inclusive, full,
true and correct copies of which are annexed to
defendant's motion for summary judgment, consti-
tute and include all of the writings, by or between
plaintiff and defendant, in the possession of or
known to plaintiff and defendant, in respect of the
promise or agreement alleged in plaintiff's amended
complaint.

2. That said writings contain no memorandum

in writing signed by defendant, or any person by him thereunto lawfully authorized, of the promise or agreement alleged in plaintiff's amended complaint.

From which findings, the court adduces the following

CONCLUSION OF LAW

1. That the claim alleged in plaintiff's amended complaint are, and each of them is, barred by the provisions of Section 58-101, Arizona Code Annotated, 1939.

Done this 21 day of December, 1944.

DAVE W. LING

Judge [74]

Approved as to Form, this 19 day of December, 1944.

HILL, ROBERT & HILL

By ROULAND W. HILL

Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 21, 1944. [75]

[Title of District Court and Cause.]

Minute Entry of Thursday, December 21, 1944

(Phoenix Division)

October 1944 Term At Phoenix

Honorable Dave W. Ling, United States District
Judge, Presiding.

Defendant's Findings of Fact and Conclusions

of Law having been heretofore submitted and by the Court taken under advisement,

It Is Ordered that the same be approved and filed as the Findings of Fact and Conclusions of Law herein.

Thereupon, It Is Ordered that the form of judgment now regularly presented be approved, filed, entered and spread upon the minutes as the judgment herein as follows:

No. Civ. 546—Phoenix

E. J. HEBETS,

Plaintiff,

vs.

BENSON G. SCOTT,

Defendant.

JUDGMENT

Pursuant to the order made and entered herein on December 11, 1944, that defendant have summary judgment herein,

It Is Ordered and Adjudged that plaintiff take nothing by his amended complaint herein, and that defendant have judgment against plaintiff for his costs herein, taxed in the sum of \$33.55.

Done in Open Court, this 21 day of December, 1944.

DAVE W. LING

Judge.

Approved as to Form, this 16 day of December,
1944.

HILL, ROBERT & HILL
By ROULAND W. HILL
Attorneys for Plaintiff. [76]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that E. J. Hebets, Plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order of the above Court that the defendant have summary judgment, which order was entered in the civil docket of said Court on December 11, 1944; and from the order and judgment of the above Court that Plaintiff take nothing by his amended complaint; and that the findings of fact and conclusions of law be approved and filed as the findings of fact and conclusions of law herein, and that the form of judgment presented be approved, filed, entered and spread upon the minutes as the judgment herein, which order was entered in the civil docket of said Court on December 21, 1944.

Dated this 8 day of January, 1945.

HILL, ROBERT & HILL
ROULAND W. HILL
Attorneys for Plaintiff

A copy of the foregoing Notice of Appeal was served on me this 8th day of January, 1945.

BLAINE B. SHIMMEL

By A.C.

Attorney for Defendant. [77]

[Endorsed]: Filed Jan. 8, 1945. [78]

[Title of District Court and Cause.]

BOND ON APPEAL

State of Arizona,
County of Maricopa—ss.

Know All Men by These Presents:

That E. J. Hebets, of Phoenix, Maricopa County, State of Arizona, as principal, and the National Surety Corporation, as surety, are firmly held and bound unto the above named Benson G. Scott in the sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Benson G. Scott for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns jointly and severally, firmly by these presents.

Whereas on December 11, 1944 an order was entered in the above entitled proceeding that the said defendant, Benson G. Scott, have summary judgment herein; and

Whereas an order and judgment was entered in the above entitled proceeding on December 21, 1944 that the findings of fact and conclusions of law be approved and filed as the findings of fact and con-

clusions of law in the above entitled proceeding and that the form of judgment presented be approved, filed, entered and spread upon the minutes as the judgment in the above entitled proceeding, and that the plaintiff take nothing by his amended complaint. [79]

And the appellant, E. J. Hebets, feeling aggrieved thereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit.

Now, therefore, the condition of this obligation is such, that if the aforesaid judgment is affirmed or modified by the appellate court, or if the appeal is dismissed, the appellant, E. J. Hebets, will pay all costs which may be awarded against him on said appeal.

Witness our hands hereto this 6 day of January, 1945.

E. J. HEBETS

E. J. Hebets,

Principal

[Seal] NATIONAL SURETY
CORPORATION

Surety

By B. H. ALARENDAR
Attorney-in-Fact

A copy of the foregoing Bond on Appeal was served on me this 8th day of January, 1945.

BLAINE B. SHIMMEL

By A.C.

Attorney for Defendant.

[Endorsed]: Filed Jan. 8, 1945. [80]

[Title of District Court and Cause.]

STATEMENT OF POINT ON WHICH PLAINTIFF AND APPELLANT INTENDS TO RELY ON APPEAL

Comes Now E. J. Hebets, plaintiff above named and appellant, and states that he intends to rely on appeal on the following point:

The documents numbered 1 to 43 attached and made a part of defendant's motion for summary judgment, constitute a sufficient memorandum of an agreement authorizing and employing the plaintiff as a broker to sell real property to take the said agreement out of the operation of the statute of frauds, to-wit, Section 58-101 Arizona Code Annotated 1939.

Dated this 8 day of January, 1945.

HILL, ROBERT & HILL

ROULAND W. HILL

Attorneys for Plaintiff

A copy of the foregoing Statement of Point on which Plaintiff and Appellant intends to Rely on Appeal was served on me this 8th day of January, 1945.

BLAINE B. SHIMMELL

Attorneys for Defendant

By A. C. [81]

[Endorsed]: Filed, Jan. 8, 1945. [82]

[Title of District Court and Cause.]

PLAINTIFF'S AND APPELLANT'S DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To the Clerk of the Above Court:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following and no other papers and exhibits, to-wit:

1. Plaintiff's amended complaint.
2. Defendant's answer.
3. Defendant's motion for summary judgment and documents numbered 1 to 43, inclusive, attached to and made a part of said motion.
4. Stipulation dated November 27, 1944 and filed November 28, 1944.
5. Order of December 11, 1944 that defendant have summary judgment.
6. Findings of fact and conclusions of law filed December 21, 1944.
7. Judgment filed December 21, 1944.
8. Notice of appeal.
9. Bond on appeal.
10. Statement of point on which plaintiff and appellant intends to rely on appeal.
11. Each and every minute entry and order rendered and entered by the trial court other than those heretofore particularly specified. [83]
12. This designation of contents of record on appeal.

Dated this 8th day of January, 1945.

HILL, ROBERT & HILL
ROULAND W. HILL

Attorneys for Plaintiff
and Appellant

A copy of the foregoing Plaintiff's and Appellant's Designation of Contents of Record on Appeal was served on me this 8th day of January, 1945.

BLAINE B. SHIMMELL

Attorney for Defendant

By A.C.

[Endorsed]: Filed Jan. 8, 1945. [84]

[Title of District Court and Cause.]

STIPULATION OF PARTS OF RECORD TO
BE INCLUDED IN RECORD ON AP-
PEAL

It is stipulated by and between the parties hereto by their respective attorneys of record that the following parts of the record in the above case be included in the record on appeal:

1. All those parts of the record heretofore designated by the plaintiff and appellant.
2. Petition for removal.
3. Order for removal.
4. The stipulation.

Dated this 16th day of January, 1945.

HILL, ROBERT & HILL

ROULAND W. HILL

Attorneys for Plaintiff
and Appellant

BLAINE B. SHIMMELL

Attorney for Defendant
and Appellee

[Endorsed]: Filed Jan. 16, 1945. [85]

In the United States District Court
for the District of Arizona

**CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD**

United States of America,

District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of E. J. Heberts, Plaintiff, versus Benson G. Scott, Defendant, numbered Civil-546-Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 85, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the Designation of Contents of Record

on Appeal and Stipulation of Additional Record on Appeal filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$10.15 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the Seal of the said Court this 19th day of January, 1945.

[Seal] EDWARD W. SCRUGGS
 Clerk [86]

[Endorsed]: No. 10974. United States Circuit Court of Appeals for the Ninth Circuit. E. J. Hebets, Appellant, vs. Bensen G. Scott, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the District of Arizona.

Filed January 30, 1945.

PAUL P. O'BRIEN
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10974

E. J. HEBETS,

Appellant,

vs

BENSON G. SCOTT,

Appellee.

STATEMENT ADOPTING STATEMENT OF
POINT ON WHICH PLAINTIFF AND
APPELLANT INTENDS TO RELY ON
APPEAL

Comes now appellant and respectfully states that he adopts the statement of point on which plaintiff and appellant intends to rely on appeal heretofore filed with the Clerk of the trial court on the 8th day of January, 1945 as the statement of points upon which he intends to rely on appeal.

Dated this 27th day of January, 1945.

HILL, ROBERT & HILL

ROULAND W. HILL

Attorneys for Appellant

A copy of the foregoing Statement was served on me this 27th day of January, 1945.

BLAINE B. SHIMMELL

Attorney for Appellee

By R.C.

[Endorsed]: Filed Jan. 30, 1945. Paul P.
O'Brien, Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10974

E. J. HEBETS,

Appellant,

vs

BENSON G. SCOTT,

Appellee.

DESIGNATION OF PARTS OF THE RECORD
WHICH APPELLANT CONSIDERS NEC-
ESSARY FOR THE CONSIDERATION OF
THE APPEAL

To the Clerk of the Above Court:

Appellant respectfully designates the following parts of the record on appeal in the above case as necessary for the consideration of the appeal and respectfully requests that the Clerk print the following parts of the record only, to-wit:

1. Plaintiff's amended complaint.
2. Defendant's answer.
3. Defendant's motion for summary judgment and documents numbered 1 to 43, inclusive, attached to and made a part of said motion.
4. Stipulation dated November 27, 1944 and filed November 28, 1944.
5. Order of December 11, 1944 that defendant have summary judgment.
6. Findings of fact and conclusions of law filed December 21, 1944.

7. Judgment filed December 21, 1944.
8. Notice of appeal.
9. Bond on appeal.
10. Statement of point on which plaintiff and appellant intends to reply on appeal.
11. Each and every minute entry and order rendered and entered by the trial court other than those heretofore particularly specified.
12. Designation of contents of record on appeal.
13. Petition for removal.
14. Order of removal.
15. Stipulation of parts of record to be included in record on appeal, dated January 16, 1945.
16. Statement adopting statement of point on which plaintiff and appellant intends to rely on appeal.
17. This designation of the parts of the record which appellant considers necessary for consideration on appeal.

Dated this 27th day of January, 1945.

HILL, ROBERT & HILL

ROULAND W. HILL

Attorneys for Appellant

A copy of the foregoing Designation was served on me this 27th day of January, 1945.

BLAINE B. SHIMMEL

Attorney for Apellee

By AC

[Endorsed]: Filed Jan. 30, 1945, Paul P. O'Brien, Clerk.

